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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Since the Federal Communications Commission ("Commission") adopted wireless Enhanced 911 ("E911") rules in 1996, wireless carriers have made the technical and operational system upgrades necessary to transmit Automatic Number Identification ("ANI") and Pseudo-ANI to Public Safety Answering Points ("PSAPs"). As a result, wireless carriers are prepared to implement Phase I E911 services as soon as the Commission's E911 preconditions are satisfied. In fact, wireless carriers have an incentive to provide the service as soon as possible since (a) they have already made the investment and cannot get reimbursed until the service is implemented; and (b) their customers currently pay E911 fees/charges in areas where they do not yet have access to this emergency service.

Therefore, Nextel submits these comments on the August 9, 1999 Report of the Consensus Parties to further demonstrate some of the complexities in E911 implementation that have added to the delays in providing service, and to offer solutions the Commission should introduce to facilitate the Phase I E911 implementation process. As a nationwide carrier, for example, Nextel continues to negotiate E911 contracts with individual PSAPs. As with any contracting process, negotiations consume time and resources. However, continued uncertainties regarding liability protection and the scope of carrier cost recovery are creating further delays. Therefore, Nextel suggests that the Commission facilitate the

implementation process and speed introduction of wireless E911 services by:

- (a) providing wireless carriers liability protection for the transmission of E911 calls, rather than leaving this issue to individual contract negotiations;
- (b) clarifying that its rules require "**full**" cost recovery, and that the E911 preconditions are not met until a signed cost recovery agreement, authorizing reimbursement of the carrier's costs, is in place;
- (c) providing guidelines governing what are "recoverable" recurring and non-recurring costs; and
- (d) articulating that the Commission's E911 rules do not provide states an avenue for imposing unrelated obligations, e.g., local employment codes, on wireless carriers.

Providing the above clarifications would facilitate wireless E911 implementation by eliminating some of the uncertainties in the PSAP-carrier negotiation process. Lack of guidelines has resulted in diverse contracting and reporting requirements. The Commission, therefore, should take action as explained herein to ensure that the wireless E911 rules do not become a "hook" to bring wireless carriers under a plethora of local regulation essentially unrelated to providing Phase I service.

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the August 16, 1999 Public Notice of the Federal Communications Commission ("Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the August 9, 1999 Report ("the August 9 Report") of the Cellular Telecommunications Industry Association ("CTIA"),^{2/} the Personal Communications Industry Association ("PCIA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the National Emergency Number Association ("NENA"), and the National Association of State Nine One One Administrators ("NASNA") (hereinafter collectively "the Consensus Parties") regarding the implementation of wireless Phase I enhanced 911 ("E911") services.

^{1/} Public Notice, "Wireless Telecommunications Bureau Requests Comment on Wireless E911 Report Filed By CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999," DA 99-1627, released August 16, 1999.

^{2/} Although Nextel is not a member of CTIA, it participated in various CTIA preparatory meetings and provided input for the August 9 Report.

II. BACKGROUND

In 1996, the Commission adopted a Report and Order in this proceeding,3/ requiring that wireless carriers implement E911 in two phases. The first phase, which is the subject of the August 9 Report, requires wireless carriers to transmit to the appropriate Public Safety Answering Point ("PSAP") a call-back number ("Automatic Number Identification" or "ANI") and the cell-site location of the caller ("Pseudo-ANI" or "P-ANI"),4/ provided, however, that each of the following three preconditions are met:

- (1) the wireless carrier receives a "request for E911 service from the administrator of a PSAP that has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service,"5/
- (2) "LEC infrastructure will support the service,"6/ and
- (3) "a cost recovery mechanism is in place."7/

Once these pre-conditions are met and a carrier received a

3/ Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) ("E911 Report and Order"); Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997) ("E911 Reconsideration Order").

4/ Phase II, which is not discussed in these Comments, required more accurate location capabilities. These precise location requirements and the deadlines for implementing Phase II capabilities are currently under consideration by the Commission.

5/ E911 Report and Order at para. 63. Later, in the E911 Reconsideration Order, however, the Commission eliminated a portion of this requirement when it found that PSAP upgrades could be avoided via the use of devices such as the Proctor Box, which eliminates the need for a PSAP to upgrade its CAMA trunks to systems that can readily accept 20 digits rather than only seven. See E911 Reconsideration Order at paras. 104-107.

6/ *Id.*

7/ *Id.*

Phase I request from a PSAP, it had until April 1, 1998 or six months after the request, whichever was later, to initiate transmitting ANI and P-ANI to the PSAP for 911 calls from its subscribers.^{8/} Thus, the Commission's E911 Rules contemplate a cooperative partnership among wireless carriers, LECs and the PSAPs ultimately responsible for answering emergency calls and dispatching emergency services providers such as police, fire and rescue units. Much of the ongoing difficulties obstructing Phase I implementation concerns the often inconsistent interests of these partners as well as the ambiguity of the Commission's rules on critical issues such as the specifics of its cost recovery requirements, as discussed below.

III. DISCUSSION

In the August 9 Report, the Consensus Parties responded to the Commission's request for comment on the reasons for the ongoing delay in bringing wireless Phase I E911 services to the public. The August 9 Report points out that wireless carriers have essentially rebuilt their networks in recent years to enable them to provide ANI and cell site location to a PSAP.^{9/} The August 9 Report indicates, and Nextel concurs, that the wireless industry has generally shouldered its responsibilities for undertaking the enhancements necessary to bring Phase I

^{8/} *Id.* at paras. 10-11.

^{9/} For example, Nextel implemented Phase I capability in an upgrade to its Mobile Switching Centers ("MSOs") in 1998.

capabilities to wireless customers.^{10/}

Nextel is one of only a few wireless carriers with a near-nationwide service area. Accordingly, Nextel has responded to and negotiated with numerous PSAPs throughout the Nation requesting Phase I information delivery. Based on its experience, Nextel offers the following comments to supplement the information provided by the August 9 Report concerning the primary recurring obstacles to Phase I implementation

The Report identifies as one of the primary reasons for delays in Phase I implementation - which, in hindsight should probably have been anticipated by the Commission - the complexity of state legislative processes. Adopting legislation to authorize PSAPs to receive wireless E911 calls, to provide limited liability for E911 providers comparable to that provided landline telephone companies for transmitting 911 calls, and/or to authorize cost recovery for its implementation and provision,

^{10/} Nextel, for example, is not only technically ready to provide Phase I E911 services, but is incented to move forward with its implementation. First, Nextel has invested hundreds of thousands of dollars, as well as thousands of man-hours, to implement Phase I and seeks cost recovery as provided under the Commission's rules. Secondly, Nextel's customers are paying E911 fees in many states and localities and should, therefore, have access to the services they are funding. Third, as E911 Phase I becomes more widespread, wireless carriers will have an increasingly urgent desire to implement it in their service areas in response to competitive forces. In other words, wireless carriers have little incentive to delay E911 Phase I deployment; on the contrary, they have fulfilled their obligations and continue to work daily on facilitating the fulfillment of each Phase I precondition and, ultimately, provision of Phase I services.

simply takes time.^{11/} Given these realities, wireless carriers, public safety organizations and PSAPs have been remarkably successful in moving needed legislation through the states during the past three years.

Other implementation problems raised in the August 9 Report include the sheer number of PSAPs involved in the implementation process (at last count, perhaps as many as 10,000). As indicated in the discussion of state legislative issues, above, many states have not established centralized cost recovery and contracting mechanisms for Phase I. This results in wireless carriers becoming mired in the implementation process as they work through negotiations for cost recovery, liability and indemnification, and other basic contract issues on a PSAP-by-PSAP basis. The same is true from the PSAP perspective dealing with multiple wireless service providers in their coverage area. As with the legislative process, this consumes significant time and resources. This issue is only aggravated in those instances in which the LEC and/or PSAP does not have the technical capabilities required to receive and display Phase I information -- thereby adding to the cost recovery issues.

Nextel emphatically concurs with the Consensus Parties that the absence of federal or federally-mandated liability protection

^{11/} Many state legislatures are in session for only a few months every year; some only convene once every two years. Thus, if a bill to provide uniform PSAP and wireless carrier cost recovery funding is not adopted in the current legislative session, it often cannot be considered again for at least a year -- thus delaying Phase I implementation efforts.

for wireless carriers also is a significant delaying factor in implementing Phase I service. Without at least the same protections provided by state law for wireline carriers transmitting 911 calls,^{12/} wireless carriers must attempt to contract for such liability protection on a case-by-case basis.^{13/} Given the inherent nature of wireless communications, carriers cannot reasonably be expected to provide potentially life-impacting emergency services without some protection for the known limitations of wireless communications networks - particularly limited liability for instances where calls cannot be completed or "drop" despite the carrier's exercise of reasonable and due care. Failing to address this matter on a consistent uniform nationwide basis will to delay wireless Phase I implementation as carriers, LECs and PSAPs attempt to hammer out liability solutions.

A. The Commission's Phase I Rules Must Ensure Competitively Neutral E911 Implementation

As the Commission recognized in the E911 Report and Order, "no party disputes the fundamental notion that carriers must be able to recover their costs for providing E911 services."^{14/} In

^{12/} Wireline carriers traditionally enjoy limited liability for failing to complete 911 calls despite the historically higher call completion reliability of fixed wireline telephone networks.

^{13/} Although some states have extended liability protection to wireless carriers for 911 service, many have not.

^{14/} E911 Report and Order at para. 89. Although there was no dispute about cost recovery at the time the Commission adopted its rules, APCO now supports no cost recovery via its support for bill and keep, i.e., carriers "bill" their customers through higher prices and thereby recover the costs. APCO Addendum Regarding

fact, **full** cost recovery -- as opposed to the less-than-full recovery and the no-recovery proposals of some parties -- is the Commission's only mechanism for ensuring a level playing field among CMRS competitors. If carriers are forced to implement Phase I services without full cost recovery, some carriers, particularly new entrants and small carriers that have higher Phase I implementation costs, will find themselves competitively disadvantaged by the Commission's E911 rules. Without an assurance of full cost recovery, these carriers will be forced to recover costs through increased consumer prices, thereby diminishing the vigorous price competition in the wireless industry today. Alternatively, they could decide to absorb the costs -- a very different proposition for new entrant carriers undertaking immense capital expenditures to build competitive networks vis-à-vis the incumbent wireless carriers that constructed their networks over the past decade.

The Commission established E911 requirements on a cost recovery basis; it can facilitate more expeditious E911 implementation by affirming this requirement and providing guidance as to reimbursable costs for E911 Phase I implementation. The Commission must not permit its public interest-serving E911 mandates to create artificial, regulatory-based competitive disadvantages among wireless service providers.

The Commission can assure that E911 implementation is

Cost Recovery, filed August 9, 1999. As discussed herein, bill and keep and any other mechanism that falls short of reimbursing carriers' full costs are not in the public interest.

competitively neutral by clarifying that (a) its rules intend that carriers recover their **full** costs of E911 implementation, and (b) that reimbursable "costs" include both recurring and non-recurring costs, as discussed further below. This will not only significantly simplify E911 implementation negotiations, but prevent the Commission's E911 mandate from undercutting the requirements of the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") requiring regulatory parity among providers of competitive, substitutable commercial mobile radio services.

B. Cost Recovery Mechanism

To facilitate the Phase I E911 implementation process, the Commission should, first and foremost, clarify that "cost recovery" means **full** cost recovery for each carrier, including both recurring and non-recurring costs. One state, for example, has expressly placed a cap on carriers' recoverable costs, without regard for individual carrier expenses. Some states/PSAPs have indicated a willingness to reimburse carriers only at the level of the lowest cost wireless provider in the market, regardless of the requesting carrier's actual costs. Another has stated that it will only reimburse what it deems to be "reasonable" costs, but has provided no definition of "reasonableness." Similarly, some payees have attempted to exclude certain costs, such as the costs paid to E911 implementation vendors such as SCC and XYPoint, or to exclude all non-recurring Phase I implementation costs. Commission clarification of what full cost recovery means, along with definitions of the cost elements that may be recovered as

recurring or non-recurring costs, would resolve these issues and thereby facilitate cost recovery agreements and the ultimate initiation of Phase I capabilities. Nextel's experience is that disagreement and negotiations over these issues with various PSAPs and PSAP organizations has injected significant delay in the implementation process.

The Commission should facilitate the contract negotiation process by providing guidance on what are "recoverable" recurring and non-recurring costs. This would eliminate the need for carriers to fight the same battle over and over again with every PSAP or state/local government, and it would provide carriers some assurance that their books will not be subject to potentially 50 state audits (as some states are attempting to require in contract negotiations. Accordingly, Nextel urges the Commission to clarify that recoverable costs include both non-recurring costs and recurring costs of providing Phase I service. Nextel offers the following guidelines:

- (1) Non-recurring Charge ("NRC"): the costs incurred from time-to-time by the wireless provider for the establishment and expansion of Phase I E911 service. NRCs include, but are not limited to: documented development, start-up, testing, purchasing and installing equipment; network upgrades to achieve Phase I E911 service compatibility; loading of information into ALI databases; establishing all necessary network connectivity, design, development and implementation of the wireless provider's operations; and other general E911 Phase I costs that may arise during the development, start-up, implementation and operation of Phase I E911 services. These costs can occur at initial implementation, and as the wireless carrier purchases additional E911 hardware and software as it adds cell sites and expands its network.
- (2) Recurring Charges: the monthly fee owed by the PSAP to

the carrier which is calculated, for example, based on the carrier's number of subscribers, and the various ongoing costs related to the provision of Phase I E911. Recurring costs include, but are not limited to: costs associated with services provided the carrier by E911 vendors, monthly LEC charges paid by the carrier that are associated with the provision of Phase I E911 services, and other internal Phase I E911 recurring costs documented in the carrier's E911 Phase I cost model, which is developed pursuant to Generally Accepted Accounting Principles.

Nextel submits that these definitions will facilitate resolution of cost recovery arrangements thereby leading to more expeditious and efficient Phase I implementation. The Commission should, in articulating the above, recognize that E911 costs are likely to vary among wireless providers. The Commission's objective should be to adopt rules and policies that facilitate each carrier's ability to implement their service in a timely manner and without being subject to unintended competitive or regulatory disparity. This offers the best hope for speeding the availability of Phase I service to wireless subscribers.

Nextel also recommends that the Commission state that having a "cost recovery mechanism in place" means that there is a signed cost recovery agreement between the carrier and a party authorized to pay, providing for reimbursement of the carrier's eligible costs. Nextel's experience to date indicates that, without a signed agreement, there is no assurance that a wireless service provider will actually receive reimbursement for its full Phase I costs. State statutes and other similar regulations simply do not provide the needed cost recovery specificity nor the guarantee that carriers will actually be reimbursed for implementing the

service. Accordingly, the Commission can facilitate the implementation process by clarifying that without the execution of a signed agreement assuring carriers they will be reimbursed pursuant to the Commission's rules, the Commission-prescribed preconditions have not been met and carriers have no obligation to provide E911 Phase I service.^{15/}

Negotiating nearly any contract requires time; PSAP-carrier contracts are no different, therefore adding additional time to the Phase I deployment process. Again, Nextel's experience is that contract requirements vary widely among PSAPs; however, while some agreements are straightforward, others attempt to obtain the wireless carrier's agreement to be subject to the requirements of local/state procurement law including, for example, affirmative action requirements, local employment codes, unique local reporting requirements, etc.^{16/} Compliance with such diverse requirements is impossible for regional and nationwide carriers. Moreover, the Commission did not intend its Phase I cost recovery requirement to become a "hook" to bring wireless carriers under a plethora of local regulation essentially unrelated to providing Phase I service. Accordingly, the Commission can help to simplify Phase I implementation by preempting such unrelated regulation; at a minimum, the Commission should articulate guidance that it does

^{15/} 47 C.F.R. Section 20.18(f).

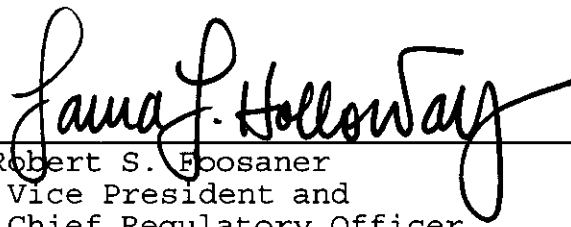
^{16/} In one particular contract negotiation, a locality has included in its contract that Nextel must comply with the "MacBride Principles," which is a duty to fulfill certain affirmative action guidelines in Northern Ireland to the extent Nextel does business in Northern Ireland.

not intend such obligations to attach to its cost recovery regulatory requirements.

IV. CONCLUSION

As discussed herein, wireless carriers are ready and willing to provide Phase I services to the public. However, numerous other issues and hurdles have and continue to prevent their provision. The Commission can take steps, as provided herein and in the August 9 Report, to facilitate the further implementation of Phase I services. In doing so, however, the Commission must maintain a competitively neutral playing field among competing commercial mobile service providers, as required by Congress in OBRA '93.

Respectfully submitted,


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Date: September 14, 1999

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 14th day of September 1999, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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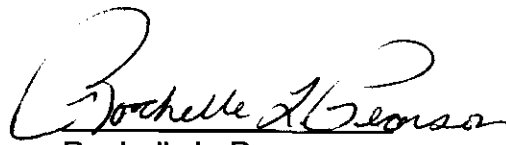
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